

পাঁচ  
টাকা



বাংলাদেশ  
কোর্ট ফি

৩/১৪, ২০/১৪, ২৭/১৪, ২০/১১/১৩, ২০/১১/১৪

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

CIVIL REVISIONAL JURISDICTION

Dated the 15th May, 2013.

Present:

Mr. Justice Sharif Uddin Chaklader

And

Mr. Justice A.K.M. Shahidul Haque

*He  
Remanded  
✓*

Civil Revision No. 4178 of 2007.

Revision preferred on the 6th day of September 2007  
against the judgment and decree of Additional District Judge,  
1st Court Comilla dated the 2nd day of August 2007 passed in  
Title Appeal No. 138 of 2006 affirming the judgment and decree  
of Joint District Judge, 2nd Court Comilla dated the 14th  
day of May 2006 passed in Title Suit No. 32 of 2004.

In the matter of:

1. Nurul Islam and others

.... Petitioners.

Verana

1. Ali Hossain and others

..... Opposite parties.



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IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION DHAKA.  
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sharif Uddin Chaklader

And

Mr. Justice A.K.M. Shahidul Huq.

Civil Revision No. 4178 of 2007

In the matter of

Nurul Islam and others

Plaintiff-Appellants-Petitioners.

Vs.

Ali Hossain and others.

Defendant-Respondent-Opposite  
Parties.

Mr. M.A. Mannan, Advocate with

Mr. Fakhar Uddin, Advocate

For the Petitioners.

Mr. Asadullah, Advocate with

Mr. Shahnaj Haque, Advocate

For the Opposite Parties.

Judgment on 15.05.2013

Sharif Uddin Chaklader, J.

This rule, at the instance of plaintiff, directed against judgment and  
decree dated 02.08.2007 passed the learned Additional District Judge, 1<sup>st</sup>





Court, Comilla dismissing Title Appeal No. 138 of 2006 affirming those dated 21.05.2006 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla dismissing Title Suit No. 02 of 2004.

Both the courts below passed lengthy judgment and dismissed the suit. In the body of the judgment of the courts below particularly the appellate court below we find some <sup>intra</sup> ~~under~~ contradiction. but at present we are not making any comment of the judgments of the courts below. From plaint it appears that suit was filed for declaration of title as:-

"আদালত দয়া প্রকাশে নিম্ন তপছিলোক্ত ভূমি অন্দরে বাদীগনের নালিশী ২য় ওপছিলোক্ত মোয়াজে ৫.৩০ শতক ভূমি বাবদ বাদীগনের বরাদ্দ স্বত্ত্ব স্বার্থে ও দখলদারি থাকা আধারনে ওৎবাবত এক ডিকলারেশন পাওয়া এবং মোকাম কুমিল্লার ৩য় স্যাব জজ আদালতে ১৯৮১ ইং সনের ৭৮ নং দেওয়ানী বইনের মোকদ্দমা বিগত ২৬/৮/৮৪ ইং তাং এবং তন্মুলীয় বদলীকৃত ২য় স্যাব জজ আদালতের ১৯৮৪ ইং সনের ২৫১ নং মোকদ্দমার ৭/৮/৮৫ ইং তারিখের চূড়ান্ত ডিক্রী পত, বার্তিস, অকার্যকারী ডিক্রী এবং বাদীগনের প্রচারিত প্রাথমিক ডিক্রী দ্বারা বাদীগন বাধ্য হবে মর্মে অপর এক ডিকলারেশন দিতে এবং ৩য় ওপছিলোক্ত দলিলদ্বয় দ্বারা, তদন্তকী, পুন প্রতীতি বিহীন, যেহেতু সাক্ষ্যই হওয়ার মর্মে অপর এক ডিকলারেশন দিতে।"

But we have astonished to find from the judgment of the trial court,

we find that courts below framed issues as:-

- ১। বাদীগনের নালিশের কোন কোন উপাত্ত হইয়াছে কি।
- ২। অত্র মোকদ্দমা waiver, estoppel & acquiescence মোটে পারিত কি।
- ৩। নালিশী ভূমিতে বরাদ্দ যুগে বাদীগনের স্বত্ত্ব দখল আছে কি।
- ৪। বাদীগন আর কি কি প্রতিকার পাইতে পারে।





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No issue has been framed as per prayer of the plaintiff but the suit has been dismissed by lengthy judgment.

Mr. Asadullah, learned Advocate, appearing for the opposite parties, frankly submits that, since issues were not framed as per claim or relief prayed for by the plaintiffs, it is a fit case to sent back suit on remand.

Since we have decided and ~~also in our decision and~~ according to the learned Advocate the suit was ~~disposed of~~ <sup>proceeding</sup> in wrong premises, we are not required to go deep into the merit of the suit which will be decided by the courts below.

The judgments and decrees complained are set aside. Title Suit No. 02 of 2004 is sent back to the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla for fresh trial after framing proper issues on the claim or relief <sup>prayed for by</sup> of the plaintiffs as well as of defendant and thereafter <sup>to</sup> pass proper judgment. If require, learned Joint District Judge, 2<sup>nd</sup> court, Comilla may allow the parties to adduce further evidences.

With these observations the rule is made absolute without any order as to cost.

The suit is very old. We are directing the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla to dispose of Title Suit No. 02 of 2004 expeditiously preferably within 6(six) months from the date of receive of this judgment by the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla without giving any unnecessary adjournment to the parties.

Send down the lower court records.

Communicate this order at once.

Sharif Uddin Chaklader

A.K.M. Shahidul Haq, J

I agree.

A.K.M. Shahidul Haq

*[Handwritten signatures and notes]*  
১২/১১/১৫  
১২/১১/১৫



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নারাজাদেশ  
কোর্ট ফি

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১৯৮৮, ১৯৮৮, ১৯৮৮, ১৯৮৮, ১৯৮৮

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION, DHAKA  
(CIVIL REVISIONAL JURISDICTION)

REVISION FROM APPELLATE DECREE NO. 4178 of 2007

Revision preferred on the 6<sup>th</sup> day of September, 2007 against the Judgment and decree of Mr. Md. Nababur Rahman, Additional District Judge, 1<sup>st</sup> Court, Comilla dated the 2<sup>nd</sup> day of August, 2007 passed in Title Appeal No. 138 of 2006 affirming the judgment and decree of Mrs. Anima Hata Saha, Joint District Judge, 2<sup>nd</sup> Court, Comilla dated the 14<sup>th</sup> day of May, 2006 passed in Title Suit No. 02 of 2004.

Nurul Islam,

Nur Ahmed @ Nur Mohammad,

Shamsul Hoque,

Abul Khaiyer,

Torab Ali being dead his heirs:-

Rezia Begum, wife of late Torab Ali,

Md. Ali,

Shamima Akhter,

Rokeya Akhter @ Rokeya Begum,

Both daughters of late Torab Ali.

Monohar Ali being dead his heirs:-

Shabana Bibi, wife of late Monohar Ali,

Montajuddin,

Monoyara Begum,

Ayesha Begum @ Hajera Begum,

Mayuri Begum,

Nuremessia,

Julekha Begum,

All daughters of late Monohar Ali.

Suraj Mia being dead his heirs:-

Sufia Khatun, wife of late Suraj Mia,

Abul Kalam,

Abul Hossain,

Kamina Begum,

Nasima Begum,

Haluya Begum,

Shefali Begum,

All daughters of late Suraj Mia.



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গেল

Sulfa Khatun, wife of Suruj Mia,  
Moharak Hossain,  
Mofizul Haque @ Mafizul Islam,  
Nazir Ahmed,  
Abdul Malek,  
Abdul Khalek,  
Mohammad Ali.

..... Plaintiff-Appellants;  
Who appeared in this revision;  
Petitioners

Ambia Khatun, wife of Md. Ibrahim Khalil,  
Md. Nurul Amin.

..... Plaintiff-Appellants;  
Who did not appear in this revision;  
Petitioners

=Versus=

Ali Hossain,  
Ahmed Hossain,  
Joynal Abedin,  
Karfulernessa, wife of late Ali Azzam,  
Abdul Malek,  
Mariyam Bibi,<sup>1</sup> daughter of late Ali Azzam,  
Nasima Akhter, wife of Nasir Ahmed,  
Ayesha Khatun, wife of late Mir Hossain,  
Fazlur Rahman,  
Sahiduddin Ahmed.

..... Proforma-Defendant-Respondent;  
Who appeared in this revision;  
and

Osman Ali,  
Sirajul Hoque,  
Amir Hossain,  
Abida Khatun, wife of Ali Akbar,





Ayesha Khatun, wife of Amir Hossain,  
 Alek Hossain,  
 Abdul Kader,  
 Rabeya Khatun,  
 Sujeda Khatun, | All daughters of late Amir Hossain.  
 Rehana Begum,  
 Fatema Khatun, wife of late nasaruddin,  
 Mariam Bibi, daughter of late Ali Asgar,  
 Hajera Bibi, wife of Sirajul Islam,  
 Joygun Bibi, wife of unknown,  
 Chand Mia,  
 Rabiya Khatun, wife of late Abdul Aziz,  
 Habibullah,  
 Abdul Mannan,  
 Nayan Tara,  
 Jaheda Begum, | All daughters of late Ali Mia.  
 Lahaternessa,  
 Mamena Khatun,  
 Md. Habibullah,  
 Abdul Mannan,  
 Nayantara, wife of late Kala Mia,  
 Jayeda Khatun, wife of Abdul Samad,  
 Lajaternessa, wife of Abdul Hamid & Sona Mia,  
 Momenn Khatun, wife of Mustafizur Rahman,  
 Shamsul Hoque,  
 Salimullah,  
 Kalimullah,  
 Rahela Begum, daughter of late Aswadullah,  
 Firoja Begum, wife of late Ali Akbar,  
 Lalmati Bibi, wife of late Abdul Kader,  
 Abu Taher,  
 Mamena Khatun,  
 Saleha Khatun,  
 Rahima Khatun, wife of late Abdul Manna,



Rahatarnessa, wife of Abul Hashem,  
Shamsun Nahar, wife of Abdur Rob,  
Abdul Latif,  
Foez Ahmed,  
Rahima Begum, Both wives of late Ami Mia,  
Hafeza Khatun,  
Hafeza Khatun, wife of Abbas Ali,  
Abu Taher,  
Abdul Hoque,  
Shamsul Hoque,  
Nurunnessa,  
Amena Khatun, wife of Jullu,  
Anowar Hossain,  
Zaheda Khatun, daughter of Sirajul Islam,  
Halima Khatun, wife of Fazlur Rahman,  
Mohammad Kamal Hossain,  
Md. Ibrahim Khalil,  
Abdul Malek.

.....Proforma-Plaintiff Appellants;  
Who did not appear in this revision;  
Opposite Parties

Revision Valued at Tk. 53,000/=only;

Upon this revision coming on for hearing in a Division Court before;

Mr. Justice Sharif Uddin Chaklader.

And

Mr. Justice A.K.M. Shahidul Huq.

Two of the Judges of this Court;

On the 15<sup>th</sup> day of May, 2013 and for judgment on the 15<sup>th</sup> day of May, 2013.

It is ordered that the Rule be and the same is hereby made absolute without any order as to costs.

And it is further ordered that the judgments and decrees complained are hereby set aside.

And it is further ordered that the Title Suit 740. 02 of 2004 is hereby sent back to the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla for fresh trial after framing proper





issues on the claim or relief prayed by the plaintiff, as well as of defendant and thereafter to pass a proper judgment. If require, learned Joint District Judge, 2<sup>nd</sup> Court, Comilla may allow the parties to adduce further evidences.

And it is further ordered and directed that the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla to dispose of Title Suit No. 02 of 2004 expeditiously preferably within 6(six) months from the date of receive of this judgment by the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla without giving any unnecessary adjournment to the parties.

Dated this the 15<sup>th</sup> day of May in the year of two thousand and thirteen of the Christian Era.

Sharif Uddin Chaklader

A. K. M. Shahidul Haq

A. H./

Read by:

Exd by:

সার্বজনীন অধিকার প্রতিষ্ঠা

সহকারী জিজিষ্টাব

সার্বজনীন মুখীয়া কোর্ট হাইকোর্ট বিভাগ

১৩৫৭২ টি সনের ১৩৫ আইন

১৩৫ বাণ্যতে কর্মতা প্রতি